

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

PORTER W. MCKEE,

Plaintiff,

v.

No.1:95CV256-S-D

CATERPILLAR, INC.,

Defendant.

OPINION

This cause is before the court upon the summary judgment motion of the defendant on the plaintiff's wrongful termination claim under state law.¹ McKee alleges that he was terminated in violation of the progressive disciplinary system outlined in the Caterpillar employee handbook. In particular, he alleges that Caterpillar was contractually prohibited from discharging him as discipline for insubordination. For the reason stated below, the court finds that the defendant is entitled to judgment as a matter of law.

Porter McKee was discharged from his employment at Caterpillar, Inc. for "insubordination." McKee argues that *Bobbitt v. The Orchards, Ltd.*, 603 So.2d 356 (Miss. 1992), controls the decision in this case and, thereby, creates a factual issue. As the plaintiff correctly argues to this court, *Bobbitt* requires an employer to be "held to his word" when it establishes an employment handbook governing employment discharge. *Id.* Mississippi follows the employment-at-will doctrine which allows an employer to discharge an employee for a good reason, a wrong reason, or no reason at all.

¹The plaintiff abandoned his ERISA claim.

Kelly v. Mississippi Valley Gas Co., 397 So. 2d 874 (Miss. 1981). However, where a contractual arrangement limits the right to termination, the employer must adhere to the terms of the contract. McKee argues that the handbook creates just such a contractual obligation.² The plaintiff further argues that factual issues exist in that there is ambiguity in the handbook. This court finds otherwise.

Under the heading of “Corrective Action and Discharge,” the Caterpillar handbook explains that the policy behind developing the rules, procedures, and practices for Caterpillar is to define the rights of the employees with an interest toward correcting unreasonable work-related conduct. The handbook states:

Most all of our rules are enforced through a formal three-step warning system. The purpose of this warning system is to give an employee the opportunity to correct any conduct or action that violates our work rules and practices. The warning procedure explanation follows:

Step 1 - Warning

An employee is orally informed of the infraction of violation.

Step 2 - Written Warning

An employee is informed in writing in the form of a warning notice.

Step 3 - Discharge

An employee who has failed to correct the prohibited action at this point is terminated.

The above procedure will be administered consistently and fairly

. . .

The handbook then delineates certain acts of misconduct or violation of work rules that warrant written, rather than oral, warnings for the first violation. Following the listing, the handbook then

²Despite the plaintiff’s invitation for this court to follow *Dandridge v. Chromcraft Corp.*, 914 F.Supp 1396 (N.D. Miss. 1996), for the proposition that where the company handbook contains no “at will” language, the court should deny summary judgment, it declines to do so.

states:

Some serious acts of misconduct or violation of work rules cannot be administered by a three-step procedure. These type of offenses are of such serious nature that first violation will normally warrant termination.

Listed below are some of the offenses that are of such a serious nature that a first violation will normally warrant immediate termination.

- *Misuse or unauthorized possession of Company property.

- *Gross negligence, gross carelessness or willful acts which result or could result in personal injury or in damage to property.

- *Removal or defacing of company bulletins, notices or signs without authorization.

- *Sleeping during working hours.

- *Embezzlement, dishonesty, falsification of records, including, but not limited to employment applications, benefit records, doctor statements, and other Company records.

- *The introduction, distribution, possession or use of controlled chemical substances (alcoholic beverages, marijuana, cocaine, etc.) in the plant or on company property or working under the influence of any of the above.

- *Carrying weapons or explosives into the plant.

- *Refusal or failure to perform work assigned; or refusal or failure to follow the directions or instructions of management/unless such assignment is later proven to have been such as to unreasonably endanger life or health.**

- *Fighting.

- *Threatening, intimidating, coercing, or interfering with employees' work.

- *Passing the Identification Card of another employee or having one's own Identification Card passed through an electronic reader by another employee.

- *Speeding or reckless driving on Company property.

- *Absence from work for three (3) consecutive days without notifying the Company and without authorization from one's Supervisor or designated representative.

*Willful or negligent violation of Safety rules and which results in the injury to any employee or the damage to or destruction of Company property.

*Discourtesy to the public on Company property.

*Leaving the premises during working hours without permission of your Supervisor.

The Separation Document, dated March 24, 1995, in McKee's personnel file states, "On 3-17-95 Porter W. McKee during an all employee meeting was insubordinate and failed to follow the directions of management during this meeting." From a reading of the handbook, the court has little difficulty in finding that Caterpillar did follow its disciplinary procedure. "Refusal or failure to follow the directions or instructions of management" is a listed offense for which immediate termination is warranted. While the plaintiff may feel that the reason for his discharge was unjustified, the court cannot "super impose" itself over the wisdom of business decisions in the at-will employment arena absent a showing that his discharge was based upon an illegal reason. Because there are no genuine issues of material fact, the court finds that judgment as a matter of law should be granted to Caterpillar.³

An appropriate order shall be issued.

This the _____ day of May, 1998.

CHIEF JUDGE

³As an alternative ground for summary judgment, the defendant asserts that because McKee invoked the disciplinary appeal procedure, he is barred from bringing this action in federal court. The court declines to issue a ruling in regard to this argument.

